

**Exhibit C**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: )  
)  
SECURITIES INVESTOR )  
PROTECTION CORPORATION, )  
)  
Plaintiff-Applicant, )  
)  
vs. ) 08-01789 (SMB)  
)  
BERNARD L. MADOFF )  
INVESTMENT SECURITIES, LLC, )  
)  
Defendant. )  
)  
)  
In re: )  
)  
BERNARD L. MADOFF, )  
)  
Debtor. )  
)

CONFIDENTIAL

Videotaped Deposition of BERNARD L.  
MADOFF, VOLUME III, taken on behalf of the  
Customers, before K. Denise Neal, Registered  
Professional Reporter and Notary Public, at the  
Federal Correctional Institution, 3000 Old Highway  
75, Butner, North Carolina, on the 8th day of  
November, 2017, commencing at 9:00 a.m.

\* \* \* \* \*

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1 THE VIDEOGRAPHER: We are now on the  
2 record. Please note that the microphones are  
3 sensitive and may pick up whispering and private  
4 conversations. Please turn off all cell phones or  
5 place them away from the microphones as they can  
6 interfere with the deposition audio. Recording will  
7 continue until all parties agree to go off the  
8 record. My name is Bob Collier representing  
9 Veritext Legal Solutions.

10 Today's date is November 8th, 2017 and the  
11 time is approximately 9:00 a.m. This video  
12 deposition is being held at Butner Federal  
13 Correction Facility located at 3000 Old 75 Highway,  
14 Butner, North Carolina and is being taken by counsel  
15 for the Plaintiff-Applicant. The caption of this  
16 case is Securities Investor Protection Corporation,  
17 Plaintiff-Applicant v. Bernard L. Madoff Investment  
18 Securities, LLC, Defendant.

19 This case is being held in the United  
20 States Bankruptcy Court, Southern District of New  
21 York, Case Number 08-01789 (SMB). The name of the  
22 witness is Bernard L. Madoff. At this time the  
23 attorneys present in the room and everyone attending  
24 remotely will identify themselves and the parties  
25 they represent. Our court reporter is Denise Neal

1 representing Veritext Legal Solutions.

2 MR. KRATENSTEIN: Good morning. Andrew  
3 Kratenstein from McDermott Will & Emery, LLP  
4 representing Malcolm Sage individually as well as  
5 the representative of his mother Lillian's estate,  
6 Martin Sage, Ann Passer Sage, Sage Associates and  
7 Sage Realty.

8 MS. CHAITMAN: Helen Davis Chaitman on  
9 behalf of a number of different Defendants.

10 MR. GOLDMAN: Peter Goldman on behalf of  
11 Bernard L. Madoff.

12 MS. DASARO: Stacy Dasaro on behalf of the  
13 Trustee.

14 MS. FEIN: Amanda Fein, Baker Hostetler,  
15 on behalf of the Trustee.

16 THE VIDEOGRAPHER: Will the court  
17 reporter, Denise Neal, please swear in the witness  
18 and we can proceed.

19 BERNARD L. MADOFF,  
20 having been first duly sworn, was examined and  
21 testified as follows:

22 EXAMINATION

23 BY MR. KRATENSTEIN:

24 Q. Good morning, Mr. Madoff.

25 A. Morning.

1 Q. Are you on any medication or is there any  
2 other reason that you cannot give truthful testimony  
3 today?

4 A. I'm on medication, but it won't interfere  
5 with my testimony.

6 Q. You believe you can give full and complete  
7 truthful testimony?

8 A. I do.

9 Q. Thank you. As I mentioned at the outset, I  
10 represent the Sages, Martin Sage, Malcolm Sage, Ann  
11 Passer Sage, as well as two entities with which  
12 they're affiliated, Sage Associates and Sage Realty.  
13 Do you recall the Sage family?

14 A. Yes.

15 Q. The Sage family were customers of yours?

16 A. Yes.

17 Q. How did they come to be your customers?

18 A. You know, through my father-in-law.

19 Q. Do you recall somebody named Maurice Sage?

20 A. Excuse me?

21 Q. Maurice Sage, do you remember him?

22 A. Yes, uh-huh.

23 Q. Who was he?

24 A. He was the father of the three children.

25 Q. Martin, Malcolm and Ann?

1 A. Right.

2 Q. And was Mr. Maurice Sage a customer of  
3 yours?

4 A. Yes.

5 Q. How did he come to be your customer?

6 A. The same way, through my father-in-law.

7 Q. Could you describe how that happened?

8 A. I had a lot of my father-in-law's clients.  
9 He was their accountant.

10 Q. And just for the record, your  
11 father-in-law's name was?

12 A. Paul Alpern.

13 Q. When did as best you can recall Maurice  
14 Sage become a customer of yours?

15 A. Probably in the '60s.

16 Q. And do you recall Maurice Sage passing  
17 away?

18 A. Yes.

19 Q. What do you recall of that?

20 A. I think he had a heart attack while giving  
21 a speech at a charitable dinner.

22 Q. Do you recall when that was approximately?

23 A. No.

24 Q. And would 1976 sound about right?

25 A. Yes.

1 Q. And is it correct that after he died his  
2 wife, Lillian, and his children, Malcolm, Martin and  
3 Ann, were customers of yours through various  
4 accounts that they held with your firm?

5 A. Yes.

6 Q. Do you recall that one of those accounts  
7 was called Sage Associates?

8 A. Correct.

9 Q. Another account was called Sage Realty?

10 A. Correct.

11 Q. Do you recall that they had various other  
12 accounts such as Maurice Sage Trust, Sage Associates  
13 II, MMRN and the Maurice Sage Foundation?

14 A. Yes.

15 Q. You've previously testified that your fraud  
16 started in 1992; correct?

17 A. Correct.

18 Q. The Sages became your customers well before  
19 your fraud started; correct?

20 A. Correct.

21 Q. Any trading you would have done in their  
22 accounts before at least 1992 would have been real  
23 trades that were actually executed?

24 A. Correct.

25 MS. FEIN: Objection to form.

1 Q. (By Mr. Kratenstein) You've also testified  
2 previously that all of your convertible bond  
3 arbitrage trading was real; is that correct?

4 A. Correct.

5 Q. So any convertible bond arbitrage trading  
6 you did in any of the Sages' accounts at any time  
7 including the Sage Realty account would have been  
8 real trades that were actually executed by your  
9 firm?

10 A. Correct.

11 MS. FEIN: Objection to form.

12 Q. (By Mr. Kratenstein) Is it correct that  
13 your fraud was limited to what is known as the split  
14 strike trading?

15 A. Correct.

16 Q. Do you recall having meetings with the  
17 Sages at your offices?

18 A. Yes.

19 Q. What do you recall of your meetings with  
20 the Sages?

21 A. I don't recall the dates, but it was in the  
22 latter years, probably in 2000, something like that.

23 Q. Was this when you were in the Lipstick  
24 Building?

25 A. Yes.

1 Q. Do you recall any of the substance of those  
2 meetings?

3 A. They wanted to change their style of  
4 trading where they were going to direct the trades.

5 Q. What do you mean by direct the trades?

6 A. In other words, they would give  
7 instructions to me what they wanted to buy and what  
8 they wanted -- and when they wanted to sell it and  
9 so on.

10 Q. Was that atypical?

11 A. Yes.

12 Q. How so?

13 A. That was the general rule was we handled  
14 all of the decision making for the clients, limited,  
15 limited decision making. Basically, there's a  
16 definition of discretionary accounts in the  
17 securities industry where discretion is limited --  
18 discretion is limited to time and price of a  
19 security.

20 That's not considered discretion. It's  
21 only when you give them -- when you make the  
22 decision to what security to buy and sell that it  
23 becomes a full discretionary account. That's an SEC  
24 regulation.

25 Q. And so could you just expand on that and



1 explain how the Sages were different than your  
2 discretionary customers?

3 A. Well, they basically didn't have a  
4 particular strategy that was one of our specialties,  
5 which would have been convertible securities trading  
6 or split strike conversion, which happened in the  
7 later years.

8 Q. And so they directed you on to whether to  
9 buy or sell specific securities?

10 A. Yes.

11 Q. That was unusual?

12 A. Yes.

13 Q. Most of your customers were by that time in  
14 split strike?

15 A. Yes.

16 Q. Did the -- do you recall anything else of  
17 your meetings with them?

18 A. What was the question?

19 Q. Do you recall anything else of your  
20 meetings with the Sages?

21 A. Not particularly, no.

22 Q. Would you meet with all three Sages, in  
23 other words, Malcolm, Martin and Ann?

24 A. Yes.

25 Q. And would one of them do talking more than

1 the other two?

2 A. Basically, Malcolm Sage.

3 Q. Okay. Did the Sages deal with anybody else  
4 at your firm such as Annette Bongiorno?

5 A. Probably, yes.

6 Q. Why do you say probably yes?

7 A. Because she was on a different floor, so  
8 I'm not aware of when the conversation took place;  
9 but she was the head bookkeeper, so normally she  
10 would follow the instructions of what the client  
11 gave her on certain -- in certain instances.

12 Q. Would you recognize Ms. Bongiorno's  
13 handwriting?

14 A. Not really.

15 Q. Well, we may see it later and we'll see if  
16 you can recognize her handwriting. I take it you'd  
17 have occasion to see her handwriting at work  
18 sometimes; is that correct?

19 A. Yes.

20 Q. What was Ms. Bongiorno's exact role with  
21 respect to the Sage accounts?

22 A. She primarily handled all of the retail  
23 clients' accounts.

24 Q. And that would include the Sages?

25 A. Yes.

1 Q. And how do you define the retail clients?

2 A. Not an institution.

3 Q. Not an institution?

4 A. Right.

5 Q. Okay. To your knowledge did she maintain a  
6 file for each customer's account?

7 A. Yes.

8 Q. To your knowledge would she maintain client  
9 correspondence in those files?

10 A. Yes.

11 (Exhibit Number 32 was marked for  
12 identification.)

13 Q. (By Mr. Kratenstein) We talked about one  
14 of the accounts earlier, one that's called the  
15 Maurice Sage Trust. I'm going to show you a  
16 document that we've marked as Exhibit 32. Put that  
17 in front of you. Mr. Madoff, do you recognize this  
18 document?

19 A. Yes.

20 Q. What is it?

21 A. It's clients account document listing the  
22 activity in the account.

23 Q. Do you see at the top it's dated  
24 December 31, 1979?

25 A. Uh-huh, yes.

1 Q. You see it's for the Maurice Sage Trust  
2 account?

3 A. Yes.

4 Q. Were documents like these be generated on  
5 or around the date indicated in the top left corner?

6 A. Yes.

7 Q. And was it ordinary practice of your  
8 business to generate accounts like -- I'm sorry --  
9 statements like this?

10 A. Correct.

11 Q. Do you know where statements like this  
12 would be stored after they were generated?

13 A. Usually, you know, in the bookkeeping  
14 department.

15 Q. And so documents of this type would be  
16 maintained under your firm's custody and control?

17 A. Yes.

18 Q. Looking now at the specific activity in the  
19 account, do you see in the middle of the page that  
20 there are several securities that are marked as  
21 having been received, Dr. Pepper, Asarco, Alcan,  
22 American Telephone & Telegraph, Skyline, Kaiser?

23 A. Yes.

24 Q. RCA, Central Penn, Reynolds and more  
25 Skyline? Do you see that?

1 A. Uh-huh.

2 Q. So when it says RECD, what does that mean?

3 A. Means the security was received into the  
4 account.

5 Q. Does that mean that the client would have  
6 physically delivered a security to you?

7 A. Usually, unless it was received from a bank  
8 or another brokerage firm.

9 Q. And then do you see above those entries  
10 there are various credits also for those various  
11 securities?

12 A. Those are sales transactions.

13 Q. And then the proceeds of the sales are  
14 shown on the account?

15 A. Correct.

16 Q. Would these have been real receipts of the  
17 securities, receipts of real securities?

18 A. Yes.

19 Q. Would the sales have been real sales of  
20 those securities?

21 A. Yes.

22 MS. FEIN: Objection.

23 (Exhibit Number 33 was marked for  
24 identification.)

25 Q. (By Mr. Kratenstein) Let's go to -- you

1 can put that document aside. I'm going to show you  
2 another document which we've marked as Exhibit  
3 Number 33.

4 MS. FEIN: Thanks. We can take just one.

5 Q. (By Mr. Kratenstein) Okay. Mr. Madoff, do  
6 you recognize what we've marked as Exhibit 33?

7 A. Yes.

8 Q. What is it?

9 A. It shows movement of monies into an  
10 account.

11 Q. You see on the top it's called house number  
12 17 cash and securities for settlement?

13 A. Uh-huh.

14 Q. Dated December 13th, 1979?

15 A. Yes.

16 Q. Do you see that?

17 A. Uh-huh.

18 Q. What is a cash and securities for  
19 settlement statement?

20 A. It just shows the movement of securities.

21 Q. From where to where?

22 A. From other brokerage firms, from the client  
23 themselves, come from a number of sources.

24 Q. And would reports like this have been  
25 generated in the ordinary course of your firm's

1 business?

2 A. Correct.

3 Q. And would a report like this have been  
4 printed out on or around the date indicated at the  
5 top, in this case, December 13th, 1979?

6 A. Correct.

7 Q. And was it a regular part of your firm's  
8 business to keep and maintain records of this type?

9 A. Yes.

10 Q. Do you know where records like this would  
11 have been maintained?

12 A. Where they would have been?

13 Q. Yeah, yes.

14 A. The same place. They were on the firm's  
15 premises.

16 Q. Thank you. Do you know how often reports  
17 such as this, these cash and securities for  
18 settlement reports, would be run by your firm?

19 A. Probably either the end of the week, the  
20 end of the month or end of the quarter. I'm not  
21 sure.

22 Q. Okay. This one is a house 17 cash and  
23 securities for settlement report. Do you see that?

24 A. Yes.

25 Q. Were similar reports run for house five, in

1 other words, are there house five cash and  
2 securities for settlement reports?

3 A. That would represent typically market  
4 making or proprietary trading, not for clients,  
5 which are the firm's principal account.

6 Q. So is the answer to my question yes, that  
7 there would be cash and securities for settlement  
8 statements for house five?

9 A. Yes.

10 Q. I'm going to mark --

11 A. I'm assuming.

12 Q. Well, I'll show you one. Here's Exhibit --  
13 that's 33. Wait a minute. 34. You know what?  
14 This will be 35. I'm going to come back to 34.

15 MS. FEIN: Okay.

16 MR. KRATENSTEIN: Sorry.

17 (Exhibit Number 35 was marked for  
18 identification.)

19 MS. FEIN: Thank you.

20 MS. CHAITMAN: Thank you.

21 Q. (By Mr. Kratenstein) Do you see that what  
22 we've marked as Exhibit 35 is a house five cash and  
23 securities for settlement statement dated in this  
24 case May 16th, 1996? Do you see that?

25 A. Yes.



1 Q. And so is this the equivalent, I appreciate  
2 it's for a different date, but it's the equivalent  
3 of the type of report we see in Exhibit 33 for house  
4 17, cash and securities for settlement?

5 A. I'm assuming so.

6 Q. Okay. And do you know how often these  
7 house five cash and securities for settlement  
8 statements would be run?

9 A. No. I'm not.

10 Q. They would be run periodically, though?

11 A. Yes.

12 Q. This is a house five statement. So would  
13 the transactions on the house five statement be real  
14 transactions?

15 A. Yes.

16 Q. And for house 17 at a time like Exhibit 33,  
17 which is December 13th, 1979, would those all be  
18 real transactions?

19 MS. FEIN: Objection to form.

20 THE WITNESS: Yes.

21 Q. (By Mr. Kratenstein) Sorry. Your answer  
22 was?

23 A. Yes.

24 Q. Thank you. To your knowledge did your firm  
25 ever stop running cash and securities for settlement

1 reports for either house 5 or house 17 during the  
2 course of your business?

3 A. I assume not.

4 Q. Turning back to Exhibit Number 33, if you  
5 turn -- there are Bates numbers in that corner. If  
6 you turn to the one that ends in 9381, look at that  
7 corner. Would you like me to do it for you? Here,  
8 turn it for you.

9 MS. CHAITMAN: What page was that?

10 MR. KRATENSTEIN: 9381.

11 MS. CHAITMAN: Okay.

12 Q. (By Mr. Kratenstein) If you look at the  
13 bottom of page 9381, do you see the transactions  
14 that we saw in Exhibit Number -- in the prior  
15 exhibit, Exhibit Number 32 and 33, which were the  
16 delivery of the various securities into the Maurice  
17 Sage Trust account and then the sales of those  
18 securities?

19 A. Yes.

20 Q. And those were at the bottom of the page  
21 there?

22 A. Uh-huh.

23 Q. Sorry. That's a yes?

24 A. Yes.

25 Q. And they show up on the cash and securities

1 for settlement statements dated December 13th, 1979;  
2 correct?

3 A. Yes.

4 Q. And these are all real positions?

5 A. Yes.

6 Q. And the sales were real?

7 A. Yes.

8 Q. If you turn in a few more pages and I'll  
9 just take it and turn to the page, to page 00709388,  
10 looking at that page, Mr. Madoff, do you see there's  
11 an entry there for National Bank of America, 160  
12 Broadway at the bottom of the page?

13 MS. FEIN: Objection to form.

14 Q. (By Mr. Kratenstein) Under National Bank  
15 of America?

16 A. Yes.

17 Q. And do you see under National Bank of  
18 America it indicates sales of the securities we were  
19 just talking about starting with Asarco? Do you see  
20 that?

21 A. Yes.

22 MS. FEIN: Objection to form.

23 Q. (By Mr. Kratenstein) Do you understand  
24 what these entries mean?

25 A. It means these are just sale transactions.

1 Whose account is this for? Oh, this is a cash to  
2 securities account. It would be transactions that  
3 were made through National Bank of North America.

4 Q. Does that mean that these securities were  
5 sold to National Bank of North America?

6 A. Probably correct, either sold through them  
7 as an agent for other brokerage. I'm not sure.

8 Q. Okay. Would these have been real sales?

9 A. Yes.

10 MS. FEIN: Objection to form.

11 MR. KRATENSTEIN: I'm going to take these  
12 documents and put them aside.

13 MS. FEIN: Andrew, just the name here, I  
14 think you were using National Bank of America.

15 THE WITNESS: It's National Bank of North  
16 America.

17 MR. KRATENSTEIN: I thought I said  
18 National Bank of North America, but if I didn't, I  
19 stand corrected. Thank you.

20 (Exhibit Number 34 was marked for  
21 identification.)

22 MS. CHAITMAN: Is this 34?

23 MR. KRATENSTEIN: Yeah. This is 34. I  
24 apologize. We're going out of order. This is  
25 Exhibit Number 34.

1 Q. (By Mr. Kratenstein) Mr. Madoff, do you  
2 recognize this document?

3 A. Yes.

4 Q. What is it?

5 A. It's the Maurice Sage Trust account.

6 Q. And this is dated March 31, 1980; correct?

7 A. Uh-huh.

8 Q. Sorry. That's a yes?

9 A. Yes.

10 Q. And, again, like the other Maurice Sage  
11 Trust document that we saw, account document, this  
12 would have been generated in the ordinary course of  
13 your firm's business?

14 A. Correct.

15 Q. And do you see that it shows in the middle  
16 of the page the receipt of an RCA Corp convertible  
17 bond and then two American Telephone & Telegraph?

18 A. Right.

19 Q. Two American Telephone & Telegraph  
20 securities?

21 A. Correct.

22 Q. And would those have been receipts -- is  
23 that what received means, received the securities?

24 A. Right, yes.

25 Q. Would these have been real transactions?

1 A. Yes.

2 MR. KRATENSTEIN: You can put that  
3 document aside.

4 (Exhibit Number 36 was marked for  
5 identification.)

6 Q. (By Mr. Kratenstein) I'm showing you  
7 what's been marked as Exhibit Number 36. Let me see  
8 this for a second. That's the first page. Just a  
9 second. Do you have two pages?

10 MS. FEIN: We have one.

11 MR. KRATENSTEIN: There's the next one.

12 MS. FEIN: Thank you.

13 Q. (By Mr. Kratenstein) I'm showing you  
14 what's been marked as Exhibit Number 36.

15 MS. CHAITMAN: Thank you.

16 Q. (By Mr. Kratenstein) And do you see that,  
17 Mr. Madoff, this is another Maurice Sage Trust  
18 statement, this one from June 30th, 1981?

19 A. Correct.

20 Q. And like the other Maurice Sage Trust  
21 account documents, this would have been generated in  
22 the ordinary course of your firm's business?

23 A. Yes.

24 Q. You see it shows the sale of in the middle  
25 of the page American Telephone & Telegraph?

1 A. Yes.

2 Q. Would that have been a real transaction?

3 A. Yes.

4 MS. FEIN: Objection to form.

5 Q. (By Mr. Kratenstein) Sorry. I'll ask it  
6 again. Would that have been a real transaction?

7 MS. FEIN: Objection to form.

8 THE WITNESS: Yes.

9 MS. FEIN: I'm just objecting to your use  
10 of the term real.

11 MR. KRATENSTEIN: Real.

12 MS. FEIN: We didn't define real, but  
13 you've been using it frequently.

14 Q. (By Mr. Kratenstein) When I say -- when I  
15 say a real transaction, what do you understand me to  
16 be meaning?

17 A. Let's assume a legitimate transaction where  
18 we actually buy or sell the securities.

19 MR. GOLDMAN: That actually took place?

20 THE WITNESS: Hmm?

21 MR. GOLDMAN: That actually took place?

22 THE WITNESS: Yes.

23 Q. (By Mr. Kratenstein) So when we say real,  
24 and you understand for all the prior questions I  
25 asked you about real transactions --

1 A. Correct.

2 Q. -- we were talking about an actual purchase  
3 or sale of a security or delivery of a security that  
4 actually took place?

5 A. Can't you just make the assumption if I  
6 state that all the transactions prior to 1992 were  
7 real transactions or are we going to go through this  
8 whole charade of back and forth?

9 (Exhibit Number 37 was marked for  
10 identification.)

11 Q. (By Mr. Kratenstein) Well, I do want to  
12 get into -- and I don't mean to go through a  
13 charade. I just want to get through the documents  
14 quickly, which I will quickly. I'm almost done with  
15 these --

16 A. Okay.

17 Q. -- and then we'll be done. There are just  
18 some specific ones I need to make sure of. I'm  
19 marking Exhibit 37. Actually, there's a two-page  
20 document. This is part of this exhibit. Didn't get  
21 stapled for some reason. Here's this one. Just a  
22 couple more of these and then we'll be done. You  
23 see this is a December 31, 1981 Maurice Sage Trust  
24 statement?

25 A. Yes.



1 Q. And this would have been generated in the  
2 ordinary course of your firm's business?

3 A. Yes.

4 Q. And do you see that in the middle of the  
5 page there's another sale of an American Telephone &  
6 Telegraph security?

7 A. Yes.

8 Q. And that would have been a real transaction  
9 that actually occurred?

10 A. Yes.

11 (Exhibit Number 38 was marked for  
12 identification.)

13 MR. KRATENSTEIN: Thank you. You can put  
14 that document aside. There's Exhibit 38.

15 MS. FEIN: Thanks.

16 Q. (By Mr. Kratenstein) Mr. Madoff, this  
17 document is a little bit different than the ones I  
18 was just showing you. Do you see at the top it's  
19 dated January 31, 1983, National Bank of North  
20 America?

21 A. Correct.

22 Q. What is this document, if you know?

23 A. It's a month-end statement for activity  
24 that happened during the month and at the end of the  
25 month shows what the account was, long or short.

1 Q. Would these -- it says at the top National  
2 Bank of North America. Does that mean that these  
3 were securities held at the National Bank of North  
4 America by your firm?

5 A. Probably, yes. Could have been held in a  
6 depository.

7 Q. Why does it say National Bank of North  
8 America?

9 A. That's who had the -- that's whose account  
10 it was.

11 Q. And you would hold securities at National  
12 Bank of North America; is that correct?

13 A. Sometimes, yes.

14 Q. I'm going to turn you to a specific page,  
15 0964437. Do you see towards the bottom of that page  
16 -- 964437 everybody. Tell me when you're there.

17 MS. DASARO: Got it. Thank you.

18 Q. (By Mr. Kratenstein) If you look at the  
19 bottom of the page four entries up there's that RCA  
20 convertible bond we talked about earlier. Do you  
21 see that?

22 A. Yes.

23 Q. And it's listed as being at the National  
24 Bank of North America. Do you see that?

25 A. Yes.

1 Q. So does that mean that that bond was held  
2 at the National Bank of North America?

3 MS. FEIN: Objection to form.

4 THE WITNESS: It depends upon -- yes, but  
5 depending upon what role they were acting as. They  
6 could have -- they could have cleared their  
7 transactions through somewhere else, through another  
8 depository. I have no way of knowing that.

9 Q. (By Mr. Kratenstein) Okay. But you are I  
10 take it based on your prior testimony confident that  
11 this is a real bond that was held somewhere?

12 A. Correct.

13 MR. KRATENSTEIN: Thank you. You can put  
14 that document aside.

15 (Exhibit Number 39 was marked for  
16 identification.)

17 Q. (By Mr. Kratenstein) This is Exhibit 39.  
18 You see, Mr. Madoff, this is another National Bank  
19 of North America ledger?

20 A. Correct.

21 Q. This one dated January 31, 1983?

22 A. Correct.

23 Q. Okay. And this one shows -- this is a  
24 document that also would have been generated in the  
25 ordinary course of your firm's business?

1 A. Correct.

2 Q. It shows various instruments on this  
3 document. Do you see that?

4 A. Yes.

5 Q. Including various bonds, et cetera. Do you  
6 see that?

7 A. Correct.

8 Q. And would these have all, again, been  
9 actual real positions?

10 A. Correct.

11 Q. You held securities at other banks as well;  
12 is that right?

13 A. Correct.

14 Q. They included Chase Manhattan, Continental,  
15 Commercial Bank of North America, Meadowbrook,  
16 Marine Midland, Barclays, Bear Stearns, National  
17 Westminster Bank and Bankers Trust; is that correct?

18 MS. FEIN: Objection to form.

19 THE WITNESS: Correct, plus other  
20 brokerage firms.

21 MR. KRATENSTEIN: Thank you. You can put  
22 that document aside.

23 (Exhibit Number 40 was marked for  
24 identification.)

25 Q. (By Mr. Kratenstein) There's Exhibit 40.

1 Mr. Madoff, do you see that this is a June 30, 1986  
2 account statement for the Maurice Sage Trust?

3 A. Yes.

4 Q. Another statement that would have been  
5 generated in the ordinary course of your firm's  
6 business?

7 A. Yes.

8 Q. Do you see that it shows that RCA bond we  
9 talked about earlier being sold on or around  
10 June 19th, 1986, top entry?

11 A. Yes.

12 Q. And, again, that was a real sale?

13 A. Yes.

14 Q. Actual transaction; correct?

15 A. Yes.

16 Q. Thank you. You can put that document  
17 aside. I'm going to switch topics. In addition to  
18 convertible bond arbitrage trading, did your firm do  
19 trading or other types of arbitrage trading?

20 A. Yes.

21 Q. Did that include -- have you heard of the  
22 term corporate events arbitrage?

23 A. Yes.

24 Q. What is that?

25 A. It's when -- it could be a stock split, it

1 could be a special dividend payment, could be any  
2 number of events that happened in a particular  
3 company.

4 Q. You described when you talked about the  
5 convertible bond arbitrage trading you did something  
6 called legging in?

7 A. Correct.

8 Q. Which I believe you described as  
9 accumulating a position over time and then averaging  
10 a price; is that right?

11 MS. FEIN: Objection to form.

12 THE WITNESS: That's correct.

13 Q. (By Mr. Kratenstein) That's correct;  
14 right?

15 A. Yes.

16 Q. When you did these other corporate events  
17 arbitrage, would you also leg in?

18 A. Yes.

19 (Exhibit Number 41 was marked for  
20 identification.)

21 Q. (By Mr. Kratenstein) I'm showing you  
22 Exhibit 41. Mr. Madoff, do you see that this is a  
23 statement from Sage Realty dated May 31, 1994?

24 A. Yes.

25 Q. And do you see in the middle of the

1 statement there are transactions involving General  
2 Electric Company including a stock split?

3 A. Correct, yes.

4 Q. Could you describe what that transaction  
5 is?

6 A. It's the company splits their stock two for  
7 one or any number of variables.

8 Q. And in this case it appears that you are  
9 buying General Electric stock, 2,099 shares, on or  
10 around May 6th, 1994; is that correct?

11 A. Correct.

12 Q. And that's before a two-to-one stock split?

13 A. Correct.

14 Q. And then there's a sale of 4,198 shares in  
15 two pieces on or around May 23rd; is that correct?

16 A. Correct.

17 Q. And is this an example of the stock split  
18 arbitrage that you were discussing earlier?

19 A. Correct.

20 Q. Would this have been an actual transaction?

21 A. Yes.

22 MR. KRATENSTEIN: You can put that  
23 document aside.

24 (Exhibit Number 42 was marked for  
25 identification.)

1 Q. (By Mr. Kratenstein) I'm showing you  
2 Exhibit 42. If you turn to the second page of the  
3 document there, let me see that. Do you see on the  
4 first page of this document, which is a Sage Realty  
5 statement from December 31, 1996, do you see that?

6 A. Yes.

7 Q. And do you see that there's a purchase on  
8 or around December 24th, 1996 of 47,814 shares of  
9 AT&T?

10 A. Correct.

11 (Exhibit Number 43 was marked for  
12 identification.)

13 Q. (By Mr. Kratenstein) Do you see that?  
14 Now, let me show you another document. Just keep  
15 that in mind. This is Exhibit 43. And do you see  
16 that this is a Sage -- yep? Okay. I apologize.

17 MS. CHAITMAN: Thank you.

18 Q. (By Mr. Kratenstein) Do you see that this  
19 is a Sage Realty statement dated January 31, 1997?

20 MS. FEIN: Objection.

21 THE WITNESS: Correct, '94.

22 MR. KRATENSTEIN: Sorry. We're right. We  
23 may have the wrong -- hang on a second. Let me just  
24 check this.

25 MS. FEIN: Yeah. Mine has '96.



1 MR. KRATENSTEIN: Let me see.

2 MS. FEIN: Sorry. This one? Yeah, sorry.  
3 '94, yeah.

4 MR. KRATENSTEIN: This is right, so you  
5 have the right one. I apologize. That's the right  
6 one.

7 MS. FEIN: Okay.

8 MS. CHAITMAN: Which is the right one?

9 MR. KRATENSTEIN: Which is the right one?  
10 Hang on a second. You know what? Let me -- is that  
11 not the NCR? Let me get the right one.

12 THE WITNESS: Do I have the right to ask a  
13 question about these records?

14 MR. GOLDMAN: Why don't we -- you want to  
15 do it now because we'll just take a short recess and  
16 I'll talk to you for two minutes.

17 MR. KRATENSTEIN: Well, let me actually  
18 remark this document. I just made a -- I have the  
19 document there, so I'm going to give you the right  
20 exhibit. I'm remarking 43. You can give me that  
21 one back.

22 (Exhibit Number 43 was remarked for  
23 identification.)

24 MS. FEIN: Why don't we do the Bates for  
25 this one?

1 MR. KRATENSTEIN: This one is -- yeah,  
2 sure. This one is Sage 0009352 through 53.

3 MS. FEIN: Okay. Thank you.

4 Q. (By Mr. Kratenstein) And do you see --

5 MS. CHAITMAN: Now I need one, too.

6 Sorry.

7 MR. KRATENSTEIN: That's fine.

8 MS. CHAITMAN: Thank you.

9 Q. (By Mr. Kratenstein) Sorry about that.  
10 And do you see here this is now a January 31, 1997  
11 Sage Realty statement? Do you see that?

12 A. Yes.

13 Q. And you see now this is the year -- so in  
14 the first document we saw, Exhibit 42, that was at  
15 the end of the year 1996 and this is in the new  
16 year, 1997. Do you see that?

17 A. Yes.

18 Q. And at the top there's a transaction. It  
19 says NCR Corp spin-off from AT&T Corp. And then  
20 there are various AT&T and NCR transactions. Do you  
21 see that?

22 A. Yes.

23 Q. Can you describe what this transaction is?

24 A. It looks like a distribution of -- AT&T  
25 went through a whole series of divestitures of their

1 other companies, which was referred to as baby  
2 bells. I'm not sure what period that they took  
3 place, but we were a major market maker in AT&T  
4 forever over the 50 years that I was in business.  
5 So there were lots of events regarding AT&T and I'm  
6 assuming this is one of them.

7 Q. Okay. And this trade if we look at  
8 Exhibits 42 and 43, this trade involves if I'm not  
9 mistaken buying AT&T before the spin-off and then  
10 after the spin-off selling AT&T as well as newly  
11 received NCR shares?

12 A. Correct.

13 Q. Because AT&T had spun off NCR?

14 A. Correct.

15 Q. And what's the idea behind that? That the  
16 spin-off creates greater value?

17 A. Yes.

18 Q. Was this an actual transaction, a real  
19 transaction?

20 A. Yes.

21 Q. You can put that document aside. By this,  
22 I mean, the transactions we see on 42 and 43, real  
23 transactions?

24 A. Yes.

25 MR. KRATENSTEIN: Thank you. One more,

1 please. And this is the one I just showed you a  
2 minute ago. That's going to be 44 now.

3 MS. CHAITMAN: I have that one.

4 MR. KRATENSTEIN: You have that one?

5 MS. CHAITMAN: Yeah. You gave it to me  
6 before.

7 MR. KRATENSTEIN: Thanks, yes.

8 (Exhibit Number 44 was marked for  
9 identification.)

10 Q. (By Mr. Kratenstein) Mr. Madoff, do you  
11 see that this is a Sage Realty statement dated  
12 July 31, 1994?

13 A. Yes.

14 Q. And do you see that there are various  
15 transactions on this statement involving UAL?

16 A. Yes.

17 Q. Can you tell from looking at this what this  
18 transaction entails?

19 A. Similar to the other transaction, looks  
20 like a spin-off of some sort.

21 Q. Is it fair to say that this is a trade to  
22 buy UAL before the -- a recapitalization and then  
23 selling the stock after receiving a cash  
24 distribution?

25 MS. FEIN: Objection.

1 THE WITNESS: Possibly.

2 Q. (By Mr. Kratenstein) Your answer was?

3 A. Possibly.

4 Q. Thank you. Would this transaction have  
5 been an actual real transaction as reflected on this  
6 statement?

7 A. Correct.

8 Q. In terms of your corporate event arbitrage  
9 trading, would you sometimes take market risk over a  
10 period of time of weeks?

11 A. Correct.

12 Q. You can put that aside. Do you want to  
13 take a break now? We're changing topics.

14 MR. GOLDMAN: Yeah. You wanted to ask me  
15 a question, so let's go in the other room. You can  
16 ask me what you want to ask me and then we'll see.

17 THE VIDEOGRAPHER: Going off the record.  
18 The time is 9:40.

19 (A recess was taken.)

20 THE VIDEOGRAPHER: Back on the record.  
21 The time is 9:51.

22 (Exhibit Number 45 was marked for  
23 identification.)

24 Q. (By Mr. Kratenstein) Mr. Madoff, we talked  
25 about the fact that the Sages had an account called

1 Sage Associates, so I'm going to ask a few questions  
2 about that account now. I'm going to start with  
3 another document we're going to mark as Exhibit  
4 Number 45. I'm going to focus my questions on the  
5 first page and then the page that is Bates labeled  
6 MF 0091185. So I'm just going to -- I'll hand out  
7 copies to everyone else.

8 A. Your records.

9 MR. KRATENSTEIN: Yeah. There you go.

10 MS. CHAITMAN: I'm sorry. Take note of  
11 that Bates number. Was that 185?

12 Q. (By Mr. Kratenstein) 941185. I'm going to  
13 start on the first page and then I'll flip it for  
14 you. So if you don't mind, I'll just keep my finger  
15 there so we can get to the page, which will help us  
16 move through this relatively quickly. Mr. Madoff,  
17 you see that this is a document called house 17  
18 stock record summary through 5-31-85?

19 A. Yes.

20 Q. Do you recognize this type of document?

21 A. Yes.

22 Q. What is it?

23 A. It's usually a month-end report that lists  
24 the securities in each account.

25 Q. And these reports would be generated in the

1 ordinary course of your firm business?

2 A. Correct.

3 Q. And would they be generated on or around  
4 the date indicated at the top, May 31, 1985 in this  
5 case?

6 A. Correct.

7 Q. And were these reports like this kept on  
8 your firm's premises?

9 A. Yes.

10 Q. And created in the ordinary course of  
11 business?

12 A. Yes.

13 Q. Okay. Now I'm going to turn to the page I  
14 indicated, which is again MF 00941185. And are you  
15 there, counsel?

16 MS. CHAITMAN: Yeah.

17 Q. (By Mr. Kratenstein) Okay. I'm going to  
18 draw your attention to -- it's actually this page  
19 right here. See the bottom of the page, towards the  
20 bottom there's a Walt Disney Productions entry. Do  
21 you see that?

22 MS. FEIN: Is this the page ending in 184,  
23 Andrew?

24 MR. KRATENSTEIN: 85.

25 MS. FEIN: It's 85?

1 MR. KRATENSTEIN: Yes.

2 MS. FEIN: Okay.

3 Q. (By Mr. Kratenstein) Do you see Walt  
4 Disney Productions right here?

5 A. Yes.

6 Q. Okay. So and do you see under Walt Disney  
7 Productions there are various customer accounts  
8 listed including Sage Associates and Maurice Sage  
9 Trust?

10 A. Yes, yes.

11 Q. And do you see according to this report  
12 there are 9,000 shares of Walt Disney in Sage  
13 Associates and 5,000 in Maurice Sage Trust?

14 A. Correct.

15 Q. And according to this report, when you add  
16 up all of the customer's holdings, so in addition to  
17 Sage Associates and Maurice Sage Trust, there are  
18 entries for Appleby and then other customers. Do  
19 you see that?

20 A. Yes.

21 Q. And they add up to 34,780 shares. Do you  
22 see that?

23 A. Correct.

24 Q. That's of Disney stock; correct?

25 A. Yes.



1 Q. And then there's an entry at the bottom  
2 next to that 34,780 shares for the National  
3 Westminster Bank USA. Do you see that?

4 A. Correct.

5 Q. What does that mean, that all the stock is  
6 listed next to that bank?

7 A. That the securities are held at that bank  
8 or one of their clearing agents.

9 Q. And this is a 1985 report. So I take it  
10 from your prior testimony that these are actual  
11 securities that were actually held at the National  
12 Westminster Bank?

13 A. Correct.

14 MR. KRATENSTEIN: I'm going to move this  
15 document and mark as Exhibit 46 another document.

16 (Exhibit Number 46 was marked for  
17 identification.)

18 Q. (By Mr. Kratenstein) Mr. Madoff, do you  
19 see that what we've marked as Exhibit Number 46 is a  
20 report that at the top says 5-31-85, so May 31,  
21 1985, National Westminster Bank USA? Do you see  
22 that?

23 A. Yes.

24 Q. And do you recognize this type of document?

25 A. Yes.

1 Q. What is it?

2 A. It's activity in the account of National  
3 Westminster Bank.

4 Q. And, again, is this a document that would  
5 have been created in the ordinary course of your  
6 firm's business?

7 A. Yes.

8 Q. And would have been kept at your firm's  
9 premises?

10 A. Yes.

11 Q. That would have been generated on or around  
12 May 31, 1985?

13 A. Correct.

14 Q. And would have been maintained in the  
15 ordinary course of your firm's business; is that  
16 correct?

17 A. Correct.

18 Q. And if you turn -- and I'll do this -- to  
19 page 965279, if you look in the middle of the page  
20 -- is everybody with me?

21 MS. DASARO: Yeah.

22 Q. (By Mr. Kratenstein) At 965279 do you see  
23 that there are 34,780 shares of Walt Disney stock  
24 listed as being held at the National Westminster  
25 Bank?

1 A. Correct.

2 Q. And that matches up with the previous  
3 record that we just saw?

4 A. Correct.

5 Q. And these are actual securities held at the  
6 National Westminster Bank?

7 A. Correct.

8 MR. KRATENSTEIN: Thank you.

9 MS. CHAITMAN: Oh, I see. Right here?

10 MR. KRATENSTEIN: Yes. Top entry in the  
11 middle.

12 MS. CHAITMAN: Thank you.

13 MR. KRATENSTEIN: Okay. I want to make a  
14 suggestion. I want to take a short break and just  
15 sticker a whole bunch of exhibits instead of doing  
16 it on the record and then that way it will be a lot  
17 faster when we're on the record.

18 MS. CHAITMAN: Why don't you let me do it  
19 for you?

20 MR. KRATENSTEIN: I think because I know  
21 where I want to go.

22 MS. CHAITMAN: Oh, okay.

23 MR. KRATENSTEIN: It will take five  
24 minutes. Let's just do that.

25 MS. DASARO: Okay.

1 MR. KRATENSTEIN: Let's take a quick  
2 break. I don't want to waste your time on the  
3 record. You can get up and stretch.

4 THE VIDEOGRAPHER: Going off the record.  
5 The time is 9:57.

6 (A recess was taken and Exhibit Number 47  
7 was marked for identification.)

8 THE VIDEOGRAPHER: Back on the record.  
9 The time is 10:13.

10 Q. (By Mr. Kratenstein) Welcome back, Mr.  
11 Madoff. You had talked earlier about the Sages  
12 directing you to do trades in their accounts. I  
13 want to show you a few documents on that topic. I'm  
14 showing you Exhibit Number 47. Mr. Madoff, do you  
15 see that this is a letter from Malcolm Sage to you?

16 A. Yes.

17 Q. It's on the letterhead of Sage Associates  
18 and Sage Associates II?

19 A. Yes.

20 Q. Those were each Sage accounts?

21 A. Yes.

22 Q. And do you have any reason to believe that  
23 you did not receive this letter?

24 A. No.

25 Q. This letter would have been kept by your

1 firm?

2 A. Correct.

3 Q. Probably by Annette Bongiorno?

4 A. Correct.

5 Q. By the way, was Ms. Bongiorno, do you  
6 recall if she was left handed?

7 A. I believe so.

8 Q. So when she made a check mark, it would be  
9 a left-handed check mark?

10 A. Yes.

11 Q. Do you see that the letter begins Dear  
12 Bernie, after discussions with Paul we have come up  
13 with the following plan with regards to the Sage  
14 Associates IS-004 and Sage Associates II IS-005  
15 accounts. Do you see that?

16 A. Yes.

17 Q. First of all, do you know who Mr. Sage is  
18 referring to when he says Paul?

19 A. I would assume it's his accountant.

20 Q. And who is he?

21 A. I believe it's Paul Koenigsberg.

22 Q. And he says we have come up with the  
23 following plan. Do you know what -- have an  
24 understanding of what he means when he says the  
25 following plan?

1 A. I assume his tax plan.

2 Q. And do you see the backwards lefty checks  
3 on this letter?

4 A. Correct.

5 Q. Do you believe those to be Ms. Bongiorno's?

6 A. Correct.

7 Q. And do you see in the letter Mr. Sage is  
8 directing you to take various actions with respect  
9 to securities in the Sage Associates and Sage  
10 Associates II accounts?

11 A. Correct.

12 Q. For example, in the first entry with  
13 respect to Abercrombie & Fitch he says please  
14 deliver the short position in the seven account to  
15 the three account to close out this position. Do  
16 you see that?

17 A. Correct.

18 Q. And do you recall that Mr. Sage or the  
19 Sages rather had subaccounts within Sage Associates  
20 for long positions, short against the box positions  
21 and naked short positions?

22 A. Correct.

23 Q. Does it make sense to you that three would  
24 have been the long position account?

25 A. Correct.

1 Q. And seven the short against the box  
2 position account?

3 A. Correct.

4 Q. Eight, the naked short position account?

5 A. Yes.

6 Q. What is a short against the box?

7 A. Short against the box is when you're  
8 selling -- you're selling stock that you are also  
9 long in another account. You're long and short the  
10 same security.

11 Q. Does it mean you're actually holding the  
12 security when you go short or no?

13 A. Yes.

14 Q. And what's --

15 A. Well, I have to correct that. If it's the  
16 short against the box account, you would be long  
17 security as well. You could -- if it was what's  
18 called a naked short, you're not long in the  
19 corresponding security.

20 Q. And do you see that there are obviously  
21 various transactions here for -- instructions for  
22 Abercrombie, Dow, International Paper, Oracle and  
23 Qualcomm? Do you see that?

24 A. Correct.

25 Q. And then he asks you at the end in .1(f) to

1 please realize the approximately \$600,000 of gain in  
2 the eight account; correct?

3 A. Correct.

4 Q. Which would be the naked short account?

5 A. Yes.

6 Q. And then there are instructions for Gateway  
7 and Coca-Cola in Sage Associates II. Do you see  
8 that?

9 A. Yes.

10 Q. And at the end he says after these steps  
11 have been taken, we would like to withdraw the sum  
12 of \$6 million from Sage Associates. Do you see  
13 that?

14 A. Correct.

15 Q. And then he asks you if you have any  
16 questions, to call him or Paul; right?

17 A. Correct.

18 Q. Would you have followed these instructions?

19 A. Yes.

20 Q. How do you know that?

21 A. Just clients telling us to. We have no  
22 choice.

23 (Exhibit Number 48 was marked for  
24 identification.)

25 Q. (By Mr. Kratenstein) I'm going to show you



1 what we've marked as Exhibit Number 48, and you can  
2 compare that with this. If you look at this  
3 document, you see that this is the Sage Associates  
4 statement from November 30th, 2001?

5 A. Yes.

6 Q. And can you see on this statement the  
7 transactions that Mr. Sage directed you to do in his  
8 letter that we marked as Exhibit 47?

9 A. Correct.

10 Q. And you would have performed those  
11 transactions?

12 A. Yes.

13 Q. Would they have been real transactions?

14 A. Yes.

15 Q. You can put that document aside. And by  
16 the way, just note before actually putting it aside  
17 that this is the Sage Associates subaccount numbered  
18 seven. Do you see that?

19 A. Correct.

20 (Exhibit Number 49 was marked for  
21 identification.)

22 Q. (By Mr. Kratenstein) Okay. And then now  
23 I'm going to give you Exhibit Number 49, which is  
24 Sage Associates subaccount three from the same date.  
25 Do you see that?

1 A. Yes.

2 Q. And, again, because there were -- he was  
3 asking you to transfer between the seven and three  
4 accounts. Do you see the flip side on this?

5 A. Yes.

6 Q. Thank you. And then you recall at the end  
7 of the letter he asked you to realize -- he asked  
8 you to recognize a \$600,000 gain. Do you recall  
9 that?

10 A. Correct.

11 (Exhibit Number 50 was marked for  
12 identification.)

13 MR. KRATENSTEIN: Here's Exhibit 50.  
14 There's an extra copy.

15 MS. FEIN: Okay.

16 Q. (By Mr. Kratenstein) And do you see the  
17 \$600,000 being recognized --

18 A. Yes.

19 Q. -- in Exhibit 50?

20 A. Yes.

21 (Exhibit Numbers 51, 52 and 53 were marked  
22 for identification.)

23 Q. (By Mr. Kratenstein) Thank you. I'm going  
24 to hand you a group of documents, which I'll  
25 represent to you are the confirms reflecting all

1 these transactions. And I'm just going to ask you  
2 when you have these in front of you are these  
3 documents the confirms that reflect the transactions  
4 that we just saw in the statements.

5 Okay. So I'm just going to put them in  
6 front of you and I'm going to ask you to confirm  
7 that that's what they at least appear to you to be.  
8 So here's Exhibit -- and just wait until I give you  
9 them all. Here's Exhibit 51. This is Exhibit 52.

10 MR. GOLDMAN: Are those exhibits multiple  
11 pages, just so the record is clear?

12 MS. CHAITMAN: We didn't get 50.

13 MR. KRATENSTEIN: 50 was a one page.

14 MS. CHAITMAN: Yeah, but I don't have 51.  
15 Did you get two copies of 51?

16 MS. FEIN: No.

17 THE WITNESS: Helen, move your soda  
18 because he's about to knock it over.

19 MS. CHAITMAN: Oh, thank you.

20 THE WITNESS: I don't want to have to go  
21 through this again.

22 Q. (By Mr. Kratenstein) Here's 53. Just take  
23 a look at it while I'm handing them out and see if  
24 you can flip through and just make sure you agree  
25 whether these are the confirms showing the trades

1 that we saw in the last document?

2 MS. CHAITMAN: Can you --

3 Q. (By Mr. Kratenstein) Do you  
4 understand what -- what is Exhibit -- what is that,  
5 Mr. Madoff? Exhibit 53, what is that?

6 A. This is just a memo of transferring monies.

7 Q. Is it a -- what is known as a trade  
8 confirm?

9 A. No.

10 Q. Okay. It's a memo. So what does that  
11 mean?

12 A. It's a memo. It's a making note of a  
13 particular money transaction or receiving the  
14 movement of securities. Confirmation is what  
15 appears behind it.

16 Q. You see what's behind -- I see. So --

17 A. Confirmation is an actual purchase and sale  
18 of a transaction.

19 Q. Okay. I see. And so when you see -- these  
20 are memos you're saying, Exhibit 53, for example?

21 A. Yes.

22 (Exhibit Number 54 was marked for  
23 identification.)

24 Q. (By Mr. Kratenstein) Okay. And here's  
25 Exhibit 54.

1 MR. GOLDMAN: Are you looking at  
2 Exhibit 53?

3 THE WITNESS: Fifty-three and four.

4 MR. GOLDMAN: Okay. Under 53, the top  
5 page is the memorandum, I think, you suggested for  
6 the transfer of money. Is there anything else  
7 attached to that? Fifty-three, look at 53.

8 THE WITNESS: Yeah. I have 53.

9 MR. GOLDMAN: Okay. What's underneath it?

10 THE WITNESS: Yeah, the confirmation.

11 Q. (By Mr. Kratenstein) Is that the confirm?

12 A. Confirmation.

13 Q. So that's the confirm, the second page of  
14 53?

15 A. Right.

16 MR. KRATENSTEIN: Thank you.

17 MS. FEIN: Sorry. Just to clarify, that  
18 second page isn't the same as the first page. The  
19 transaction isn't the same. My understanding that  
20 the memo -- or the difference between the memo and  
21 the confirm I understand, but the transaction is a  
22 different dollar amount.

23 MR. KRATENSTEIN: Well, there are actually  
24 several. If you look, there are multiple  
25 transactions.

1 MS. FEIN: Okay. So --

2 MR. KRATENSTEIN: So they add up, I  
3 believe, but you can see. You can look. There are  
4 multiple. It's multiple transactions. You want a  
5 minute?

6 MS. FEIN: I can't see the math. It looks  
7 like the last page, the last page ending in 4294  
8 corresponds to the memo page that's the page ending  
9 in 290, but the two pages in between appear to be  
10 different.

11 MR. KRATENSTEIN: Let's see. Which number  
12 is that? What's the first page number?

13 THE WITNESS: 4290.

14 MR. KRATENSTEIN: Okay. And then there's  
15 another, 4291, and then there are 4292, 93, 94.

16 MS. FEIN: Yeah. And, actually, my copy  
17 doesn't have 4291. It just goes from 4290 to 4292,  
18 but 4292 and 4293 appear to be different  
19 transactions.

20 MR. KRATENSTEIN: Let me take a look at  
21 it. Fifty-three this is? Here. Well, here's 4-2.  
22 This is Exhibit 16. We'll get it worked out at a  
23 break. Let me do it at a break. I don't want to  
24 take up the time now, but thank you.

25 MS. FEIN: I understand.

1 MR. GOLDMAN: I only did that so the  
2 record was clear. As I said, there are multiple  
3 pages in each exhibit.

4 MR. KRATENSTEIN: Right.

5 MR. GOLDMAN: Once you go through it --

6 MS. CHAITMAN: What is the exhibit number  
7 that you're talking about?

8 MR. KRATENSTEIN: Fifty-three.

9 MS. FEIN: Fifty-three. My concern was  
10 the same. It was just about getting the record  
11 clear. So if we clear it up on a break, we can do  
12 it that way.

13 Q. (By Mr. Kratenstein) Yeah, sure. And then  
14 Exhibit 54 you have in front of you?

15 A. Yes.

16 Q. Does that show in addition to a memo  
17 confirms behind?

18 A. Yes.

19 (Exhibit Number 55 was marked for  
20 identification.)

21 Q. (By Mr. Kratenstein) Okay. That's this  
22 one. And now I'm going to give you 55, which again  
23 is a memo followed by the confirms?

24 A. Yes.

25 MS. FEIN: Thank you.

1 THE WITNESS: No. Wait a minute. I don't  
2 see a confirmation. I see just memos.

3 Q. (By Mr. Kratenstein) Just memos for 55?

4 A. Right.

5 MR. KRATENSTEIN: Okay.

6 MS. CHAITMAN: How about the last page?  
7 Is that a confirm?

8 MR. GOLDMAN: Yeah.

9 THE WITNESS: No. These are just --

10 MR. GOLDMAN: Go to the last page.

11 MR. KRATENSTEIN: The last page, 224.

12 THE WITNESS: Yes.

13 Q. (By Mr. Kratenstein) That's a confirm?

14 A. Yes.

15 (Exhibit Number 56 was marked for  
16 identification.)

17 Q. (By Mr. Kratenstein) 224 is a confirm.  
18 Thank you. Okay. And then the last one for this  
19 set is number 56, which is the \$600,000 we saw  
20 earlier.

21 MR. GOLDMAN: You okay? You look like you  
22 had a --

23 MS. FEIN: Well, Exhibit 55 on my copy is  
24 missing a page but it may be the one that's missing  
25 a page, so --



1 MR. KRATENSTEIN: Let me look. Which page  
2 is missing?

3 MS. FEIN: For me it's missing what would  
4 be 4223. It goes from 4222 to 4224.

5 MR. KRATENSTEIN: This has -- it does. So  
6 mine is marked the same way. It's marked the same  
7 way.

8 MS. FEIN: Understood.

9 Q. (By Mr. Kratenstein) Okay. All right. So  
10 is it fair to say that the documents that we have  
11 now marked as Exhibits 51 to 55 reflect the  
12 transactions that we saw in the letter that we  
13 marked as Exhibit 47?

14 MS. FEIN: Objection to form.

15 THE WITNESS: Correct.

16 (Exhibit Number 57 was marked for  
17 identification.)

18 Q. (By Mr. Kratenstein) Thank you. Now I'm  
19 going to mark Sage Associates two statements  
20 quickly. That was for Sage Associates. Those were  
21 the Sage Associates trades. Now, two Sage  
22 Associates II transactions that were shown in the  
23 letter which is Exhibit 47, I'm just going to show  
24 you the statements now. That's Exhibit 57. Put  
25 these here. Keep this letter here. Exhibit 57.

1 MS. FEIN: Thank you.

2 Q. (By Mr. Kratenstein) And if you see at the  
3 end of the letter, he talks about the Gateway  
4 delivery of short positions and closing out  
5 Coca-Cola. And if you look at Exhibit Number 20, do  
6 you see the Gateway and Coca-Cola transactions  
7 reflected on this statement?

8 A. Yes.

9 (Exhibit Number 58 was marked for  
10 identification.)

11 Q. (By Mr. Kratenstein) And then looking at  
12 Exhibit Number 58 --

13 MS. CHAITMAN: Did you mean to say  
14 Exhibit 20?

15 MS. FEIN: Did you mean Exhibit 57?

16 MR. KRATENSTEIN: I said 57. What did I  
17 say?

18 MS. CHAITMAN: 20.

19 MS. FEIN: 20.

20 Q. (By Mr. Kratenstein) So do you see on  
21 Exhibit 57, sorry, the Sage Associates II, the Sage  
22 Associates II transactions for Gateway and Coca-Cola  
23 reflected on Exhibit 47?

24 A. Yes.

25 Q. And now Exhibit 58.

1 MS. CHAITMAN: What you're saying is  
2 Exhibit 57 shows the transactions that Malcolm  
3 instructed?

4 MR. KRATENSTEIN: Correct.

5 MS. CHAITMAN: Okay.

6 Q. (By Mr. Kratenstein) Do you agree with  
7 that, Mr. Madoff?

8 A. Yes.

9 Q. Thank you. And Exhibit 58, which is the  
10 other side of the Sage Associates II transaction, do  
11 you see again the Gateway transfer to that account  
12 as directed by Mr. Sage --

13 A. Yes.

14 Q. -- in his letter?

15 A. Uh-huh.

16 Q. Correct?

17 A. Yes.

18 MS. FEIN: Objection to form.

19 (Exhibit Numbers 59 and 60 were marked for  
20 identification.)

21 Q. (By Mr. Kratenstein) Thank you. And here  
22 are memos and confirms, Exhibit 59. This is going  
23 to be the same set of questions, whether the  
24 confirms also reflect this time Sage Associates II  
25 activity we see in the letter that was marked as

1 Exhibit 47?

2 MS. FEIN: Objection to form.

3 THE WITNESS: Yes.

4 MR. KRATENSTEIN: Thank you. Do you have  
5 this one, Amanda?

6 MS. FEIN: I do. Thank you.

7 MS. CHAITMAN: What number is this?

8 MS. FEIN: 60. Andrew, was your question  
9 with respect to Exhibits 59 and 60?

10 Q. (By Mr. Kratenstein) Yeah. I'm asking  
11 whether on 59 and 60 they reflect the -- so it will  
12 be 59 you see, Mr. Madoff, reflects the Gateway  
13 transaction that is shown in Exhibit 47 at the  
14 bottom under Sage Associates II; correct?

15 A. Yes, correct.

16 Q. And Exhibit 60 shows the Coca-Cola  
17 transaction --

18 A. Correct.

19 Q. -- and to be in Exhibit 47; correct?

20 A. Correct.

21 (Exhibit Number 61 was marked for  
22 identification.)

23 Q. (By Mr. Kratenstein) Thank you. I'm going  
24 to show you another letter. This is Exhibit  
25 Number 61. Mr. Madoff, do you see that this is a

1 letter from Mr. Sage to you on the letterhead of  
2 Sage Associates and the Maurice S. Sage Foundation?

3 A. Yes.

4 Q. Do you have any reason to believe that you  
5 did not receive this letter?

6 A. No.

7 Q. Do you believe the handwriting on this  
8 letter to be Annette Bongiorno's?

9 A. Yes.

10 Q. Do you see that in this letter Mr. Sage  
11 writes, although it's addressed to you, he writes  
12 Dear Annette. Do you see that?

13 A. Correct.

14 Q. And that's Ms. Bongiorno?

15 A. Yes.

16 Q. He writes after discussions with Paul we  
17 have come up with the following plan with regard to  
18 the Sage Associates IS-0004 and Maurice S. Sage  
19 Foundation, Inc. IS-0197 accounts. Do you see that?

20 A. Yes.

21 Q. And, again, do you have any understanding  
22 of what plan Mr. Sage was talking about?

23 A. It's a tax plan.

24 Q. And do you have any understanding of what  
25 he was trying to accomplish tax-wise?

1 A. Yes.

2 Q. What was that?

3 A. To realize certain gains, gains and losses  
4 based upon making a sale of security.

5 Q. Okay. And do you see that he for Sage  
6 Associates directs you with respect to Emulex stock  
7 to please deliver the short position --

8 A. Right.

9 Q. -- in the seven account to the three  
10 account to close out this position; correct?

11 MS. FEIN: Objection to form.

12 THE WITNESS: Correct.

13 MR. KRATENSTEIN: Sorry. What's the basis  
14 for the objection?

15 MS. FEIN: You said he directs you, but  
16 the letter is not only addressed to him. It also  
17 has attention Annette Bongiorno right under the  
18 addressee line.

19 Q. (By Mr. Kratenstein) Okay. Do you see Mr.  
20 Sage directing Ms. Bongiorno, who worked for you;  
21 correct?

22 A. Correct.

23 Q. To please deliver the short position in the  
24 seven account to the three account to close out this  
25 position in Emulex. Do you see that?

1 A. Yes.

2 Q. The amount to be delivered is the entire  
3 amount held, 220,000 shares; correct?

4 A. Correct.

5 Q. With respect to Broadcom, Mr. Sage writes  
6 please deliver 15,000 shares in the seven account to  
7 the three account. This will leave the remaining  
8 40,000 shares in the three and seven accounts. Do  
9 you see that?

10 A. Correct.

11 Q. And then with respect to the Maurice S.  
12 Sage Foundation, Inc. account he says we would like  
13 to withdraw the sum of \$25,000. This will not  
14 require the sale of any stock because this sum is  
15 available in money market funds. Do you see that?

16 A. Yes.

17 Q. And do you see that in the handwriting for  
18 Ms. Bongiorno the date is 12-24-02? Do you see  
19 that?

20 A. Yes.

21 Q. And then he asks at the end, Mr. Sage asks  
22 if you have any questions, please call him. Do you  
23 see that?

24 A. Yes.

25 Q. Would you have followed these instructions?

1 A. Yes.

2 Q. And that's the same reason as before,  
3 because you have to follow the instructions of your  
4 customers; correct?

5 A. Correct.

6 MS. FEIN: Objection to form.

7 (Exhibit Number 62 was marked for  
8 identification.)

9 Q. (By Mr. Kratenstein) All right. Just  
10 going to show you a few documents concerning whether  
11 you did follow those instructions. We'll start with  
12 Exhibit 62.

13 MS. FEIN: Andrew, can you just clarify  
14 when you're saying you followed the instructions in  
15 your questioning?

16 Q. (By Mr. Kratenstein) What did you  
17 understand what I meant you follow the instructions?

18 A. What does it mean?

19 Q. Yeah.

20 A. It means I did what the client asked me to  
21 do.

22 Q. And would you sometimes if a client asked  
23 you to do something, would you -- who would you have  
24 do it?

25 A. Usually, you know, Annette.



1 Q. In this case it would be Annette because  
2 she was working with you?

3 A. Right.

4 Q. Do you know if she would have come to you  
5 -- do you know if you would have seen this letter  
6 that we marked as Exhibit 61?

7 A. I either would have seen it or been told  
8 about it.

9 Q. By Annette?

10 A. By Annette.

11 Q. Would that be true of all written  
12 instructions from clients?

13 A. I assume so.

14 MS. FEIN: Objection to form.

15 Q. (By Mr. Kratenstein) And why do you assume  
16 so?

17 A. Depends upon the -- could have been one of  
18 her assistants, you know, calling me if she was not  
19 available.

20 Q. But is your point that if a client gave you  
21 instructions, you'd want to know about it?

22 MS. FEIN: Objection to form.

23 THE WITNESS: Correct.

24 Q. (By Mr. Kratenstein) So we've marked  
25 Exhibit 62. And if you look at Exhibit 62, we

1 talked about Emulex and Broadcom in the letter. And  
2 do you see movements of Emulex and Broadcom as  
3 directed in the letter reflected in this statement  
4 that we marked as Exhibit 62?

5 A. Yes.

6 (Exhibit Number 63 was marked for  
7 identification.)

8 Q. (By Mr. Kratenstein) Same for Exhibit 63?

9 A. Yes.

10 Q. Same question. Do you see the movements in  
11 the Sage Associates account being directed by Mr.  
12 Sage in his letter that we've marked as Exhibit 61  
13 actually on the statements being executed?

14 A. Yes.

15 (Exhibit Number 65 was marked for  
16 identification.)

17 Q. (By Mr. Kratenstein) And then with respect  
18 there was a direction on the Maurice Sage  
19 Foundation, so I'm going to show you Exhibit 65.

20 MS. CHAITMAN: Did we have Exhibit 64?

21 MS. DASARO: I think, yeah.

22 MS. FEIN: I think this should be 64.

23 MR. KRATENSTEIN: It should be. We might  
24 have a miss. So if we have a miss, I apologize.

25 I'm not sure what happened there. Let's just call

1 this Exhibit 65 and we'll come back and if we missed  
2 64, we'll just have this gap.

3 Q. (By Mr. Kratenstein) Do you see that there  
4 in the Sage -- in Exhibit 61 he's asking to withdraw  
5 \$25,000 and do you see that in Exhibit Number 65,  
6 the \$25,000 withdrawal?

7 A. Yes.

8 (Exhibit Numbers 66, 67 and 68 were marked  
9 for identification.)

10 Q. (By Mr. Kratenstein) Finally, the memos  
11 and/or confirms. I'm showing you Exhibit 66,  
12 Exhibit 67 and Exhibit 68. And, again, Mr. Madoff,  
13 do Exhibits 66 through 68 reflect the execution of  
14 the instructions that were contained in the letter  
15 that we marked as Exhibit 61?

16 A. Yes.

17 (Exhibit Number 69 was marked for  
18 identification.)

19 Q. (By Mr. Kratenstein) Thank you. I'm  
20 showing you Exhibit Number 69. Mr. Madoff, do you  
21 see that this is a letter from Maurice Sage to  
22 Annette Bongiorno and you on the letterhead of Sage  
23 Associates and Sage Associates II?

24 MS. FEIN: Objection to form.

25 THE WITNESS: Yeah. From Malcolm Sage.

1 Q. (By Mr. Kratenstein) From Malcolm Sage,  
2 yes.

3 A. Right, yes.

4 Q. Do you have any reason to believe that you  
5 did not receive this letter?

6 A. No.

7 Q. Would it have been maintained by your firm  
8 after it was received?

9 A. Yes.

10 Q. Mr. Sage writes Dear Annette, just wanted  
11 to touch base with you regarding certain stocks in  
12 Sage Associates IS-004 and Sage Associates II  
13 IS-005. To the best of my understanding the only  
14 stocks which were held short against the box and not  
15 grandfathered, and the word grandfathered is in  
16 quotes, with respect to the constructive sales rules  
17 are Broadcom, and then he puts in parentheses Sage  
18 Associates, and RJR, and then he puts in parentheses  
19 Sage Associates and Sage Associates II.

20 Let me just stop there for a second. We  
21 talked about what a short against the box is. Do  
22 you have an understanding of what Mr. Sage meant  
23 when he referred to grandfathered?

24 A. Not really.

25 Q. Okay. Therefore -- then he goes on in his

1 sentence and says, therefore, I assume that these  
2 positions will be bought into prior to January 30 so  
3 as to avoid a constructive sale. Do you see that?

4 A. Yes.

5 Q. Do you understand him to be instructing you  
6 to buy into Broadcom and RJR?

7 MS. FEIN: Objection to form.

8 THE WITNESS: Yes.

9 MR. KRATENSTEIN: What's the basis for the  
10 objection?

11 MS. FEIN: This letter is addressed to  
12 Annette, the letterhead is Annette and it's also  
13 Dear Annette and you're saying instructing you,  
14 directing you. I just -- I have an objection to  
15 that in the past and in the future.

16 MR. KRATENSTEIN: I will fix. Thank you.

17 Q. (By Mr. Kratenstein) Do you see that the  
18 letter is addressed both to you and Ms. Bongiorno,  
19 Mr. Madoff?

20 MS. FEIN: Objection. I don't -- the firm  
21 name is listed here underneath Annette's name. I  
22 don't see that this letter is addressed to both Mr.  
23 Madoff and Annette.

24 Q. (By Mr. Kratenstein) I see. Okay. So Mr.  
25 Madoff, going back to prior testimony, is this the

1 type of letter that you would have expected Ms.  
2 Bongiorno to show you?

3 A. Yes.

4 Q. And do you have any reason to believe that  
5 she did not show it to you?

6 A. Either showed me or told me on the phone.

7 Q. Okay. And when this letter says I assume,  
8 Mr. Sage writes I assume that these positions will  
9 be bought into prior to January 30 so as to avoid a  
10 constructive sale, do you understand Mr. Sage to be  
11 directing your firm to follow those instructions?

12 A. Correct.

13 (Discussion off the record.)

14 Q. (By Mr. Kratenstein) And do you have any  
15 recollection of the tax law being changed with  
16 respect to short against the box transactions and  
17 certain of those transactions being grandfathered?

18 A. Yes, yes.

19 Q. What do you recall of that?

20 A. I recall that it happened. I can't tell  
21 you the details.

22 (Exhibit Number 70 was marked for  
23 identification.)

24 Q. (By Mr. Kratenstein) Okay. And now we're  
25 just going to go through the same drill and I'm

1 going to ask you through statements whether any of  
2 these transactions being directed in Exhibit 70 show  
3 -- 69 rather show up on the Sage Associates  
4 statements as Exhibit 70?

5 MS. FEIN: Objection to form. Thank you.

6 Q. (By Mr. Kratenstein) And do you see that  
7 this is a January 31, 2003 Sage Associates  
8 statement?

9 A. Yes.

10 Q. And do you see in the middle it shows  
11 buying into RJR and Broadcom?

12 A. Yes.

13 Q. And is that as instructed in Exhibit 69?

14 A. Yes.

15 MR. KRATENSTEIN: You can put that  
16 document aside and now we'll just do the memos or  
17 confirms quickly, Exhibit 71. Make sure this is  
18 right. Thanks.

19 (Exhibit Numbers 71 and 72 were marked for  
20 identification.)

21 Q. (By Mr. Kratenstein) Exhibit 71, and here  
22 is Exhibit 72. And if you look at Exhibit 71 and  
23 72, what are they?

24 A. Confirmations.

25 Q. Of what?

1 A. Sage Associates, R. J. Reynolds and  
2 Broadcom.

3 Q. And those are the transactions reflected in  
4 Exhibit 69 --

5 A. Correct.

6 Q. -- being executed by your firm?

7 A. Yes.

8 (Exhibit Number 73 was marked for  
9 identification.)

10 Q. (By Mr. Kratenstein) One more to go.  
11 Here's Exhibit 73. Are you okay, Mr. Madoff? You  
12 need a break?

13 A. No. I'm fine.

14 Q. Okay. We're almost there. I'm showing you  
15 Exhibit 73, Mr. Madoff, which do you see that it's a  
16 letter to Bernard L. Madoff Investment Securities,  
17 attention, Annette Bongiorno, from Malcolm Sage?

18 A. Yes.

19 Q. It's on the letterhead of Sage  
20 Associates --

21 A. Uh-huh.

22 Q. -- and Sage Associates II and the Maurice  
23 S. Sage Foundation?

24 A. Yes.

25 Q. Do you have any reason to believe you would



1 not have been made aware of this letter by Ms.  
2 Bongiorno?

3 A. No.

4 Q. In other words, she would have made you  
5 aware of it; correct?

6 A. Yes.

7 Q. And do you have any reason to believe that  
8 Ms. Bongiorno did not receive this letter?

9 A. No.

10 Q. Do you see the handwriting on the letter?

11 A. Yes.

12 Q. Is that Ms. Bongiorno's?

13 A. Definitely.

14 Q. How do you recognize it?

15 A. I recognize the handwriting now that I'm  
16 looking at it.

17 Q. Okay. The letter says -- and I'm sorry.  
18 You recognize it from having worked with her;  
19 correct?

20 A. Yes.

21 Q. And Mr. Sage writes after discussions with  
22 Paul, we have come up with the following plan with  
23 regards to Sage -- the Sage Associates IS-004, Sage  
24 Associates II IS-005 and Maurice S. Sage Foundation,  
25 Inc. IS-197 accounts. Do you see that?

1 A. Yes.

2 Q. And, again, do you have any understanding  
3 of what this plan was?

4 A. It's just a tax plan realizing gains when  
5 you have a short against the box transaction.

6 Q. Do you understand what Ms. Bongiorno's  
7 notes mean on this left-hand margin?

8 A. By looking at -- by her saying \$3 million  
9 gain, it's realizing only part of the transaction.

10 Q. What do you mean by that?

11 A. In other words, she must have more shares  
12 than she wants to sell.

13 Q. Okay. And then it says in a box no  
14 long-term. Do you see that?

15 A. Yes.

16 Q. Do you have an understanding --

17 A. She doesn't want --

18 Q. Let me finish. Do you have an  
19 understanding of what that means?

20 A. Not to receive -- doesn't -- do not take a  
21 long-term gain.

22 Q. That would be for a tax reason?

23 A. Yes.

24 Q. Under Sage Associates there are four  
25 transactions being directed. Do you see that?

1 A. Yes.

2 Q. And under Sage Associates II there's one  
3 transaction?

4 A. Yes.

5 Q. Under Maurice S. Sage Foundation there's  
6 one transaction; correct?

7 A. Yes.

8 Q. Would these transactions have been  
9 executed?

10 A. Yes.

11 Q. And that's because your firm would follow  
12 your client's instructions; correct?

13 A. Correct.

14 (Exhibit Number 74 was marked for  
15 identification.)

16 Q. (By Mr. Kratenstein) Let's just again go  
17 through the quick drill of confirming whether these  
18 show up on the statements and in the memos and  
19 confirms, so I'm going to put this letter here. I'm  
20 going to show you Exhibit 74, which is the  
21 December 31, 2013 Sage Associates statement --  
22 sorry -- 2003 Sage Associates statement. Do you see  
23 that?

24 A. Yes.

25 Q. And do you see the transfer of the Amgen

1 and Symantec as directed --

2 A. Yes.

3 Q. -- in Exhibit 73?

4 A. Yes.

5 (Exhibit Number 75 was marked for  
6 identification.)

7 Q. (By Mr. Kratenstein) And I'm going to show  
8 you Exhibit 75. And in Exhibit 75, do you see that  
9 that is a December 31, 2003 Sage Associates  
10 statement?

11 A. Yes.

12 Q. And do you see there the transactions that  
13 had been directed by Mr. Sage with respect to  
14 National Semiconductor, RJR, Amgen and Symantec?

15 A. Yes.

16 MS. FEIN: We didn't receive that.

17 MR. KRATENSTEIN: Oh, you didn't get that  
18 one? I'll just make sure I have the right one.  
19 Yes.

20 MS. FEIN: Thank you. Yes.

21 MS. CHAITMAN: That's Exhibit 74?

22 MS. FEIN: This is Exhibit 75; right?

23 MR. KRATENSTEIN: It's Exhibit 75.

24 MS. CHAITMAN: I'll ask do you have  
25 another one?

1 MR. KRATENSTEIN: Yes.

2 MS. CHAITMAN: Thanks.

3 (Exhibit Numbers 76, 77, 78 and 79 were  
4 marked for identification.)

5 Q. (By Mr. Kratenstein) And now let's just do  
6 the memos and confirms quickly and we're almost  
7 done. Here's Exhibit 76, Exhibit 77 --

8 MS. FEIN: Thank you.

9 Q. (By Mr. Kratenstein) -- and 78 and 79.  
10 Mr. Madoff, have you had an opportunity to look at  
11 what we've marked as Exhibits 70 -- what is it? 76,  
12 77, 78 and 79?

13 A. Yes.

14 Q. And can you tell me what those documents  
15 are?

16 A. Confirmations.

17 Q. Do they reflect the instructions with  
18 respect to the -- the execution of the instructions  
19 with respect to the Sage Associates account that are  
20 contained in the letter that we marked as Exhibit  
21 Number 73?

22 A. Yes.

23 (Exhibit Numbers 80 and 81 were marked for  
24 identification.)

25 Q. (By Mr. Kratenstein) Thank you. And there

1 were in that letter instructions for Sage Associates  
2 II, so let's just look at those statements quickly.  
3 This is Exhibit Number 80 and Exhibit 81.

4 And just to refresh your recollection, with  
5 respect to Sage Associates II in the letter  
6 Exhibit 73, there's an instruction with respect to  
7 Symantec for Sage Associates II. And I'm going to  
8 ask if you see on Exhibits 80 and 81 the execution  
9 of that instruction?

10 A. Yes.

11 Q. And Exhibit -- just so the record is clear,  
12 Exhibit 80 is a Sage Associates II statement from  
13 December 31, 2003. That's for the sub three  
14 account. And the next exhibit, 81, is a Sage  
15 Associates II statement, also December 31, 2003, for  
16 the seven subaccount of Sage Associates II; correct?

17 A. Yes.

18 (Exhibit Number 82 was marked for  
19 identification.)

20 Q. (By Mr. Kratenstein) Thank you. Finally,  
21 the confirm. This is Exhibit 82. Is that a -- what  
22 is Exhibit 82?

23 A. It's a memo.

24 Q. It's a memo? Does it --

25 A. Showing movement of monies.

1 Q. Does the second page show the Symantec  
2 move?

3 A. Yes.

4 Q. Thank you. And, finally, at the end of the  
5 letter, Exhibit 73, you'll see that there's a  
6 request to withdraw the sum of \$16,000. Do you see  
7 that?

8 A. Yes.

9 (Exhibit Number 83 was marked for  
10 identification.)

11 Q. (By Mr. Kratenstein) I'm just showing you  
12 Exhibit Number 83. Do you recognize Exhibit 83?

13 A. Yes.

14 Q. What is it?

15 A. A check, memo for a check.

16 Q. For how much?

17 A. Sixteen thousand dollars.

18 Q. To the Maurice S. Sage Foundation?

19 A. Yes.

20 Q. That shows the execution of the instruction  
21 at the end of Exhibit 73, the letter?

22 A. Correct.

23 (Exhibit Number 84 was marked for  
24 identification.)

25 Q. Thank you. We'll put that aside. I'm

1 showing you Exhibit 84. Do you recognize  
2 Exhibit 84, Mr. Madoff?

3 A. Yes.

4 Q. What is it?

5 A. It's a note from Annette.

6 Q. And you recognize her handwriting?

7 A. Yes.

8 Q. Would this document have been prepared --  
9 well, strike that. Are you familiar with year-end  
10 note documents prepared by Ms. Bongiorno?

11 A. Yes.

12 Q. How are you familiar with them?

13 A. I've seen it before.

14 Q. She prepared them in the ordinary course of  
15 her business?

16 A. Yes.

17 Q. And it was a regular part of her  
18 responsibilities to create notes like this?

19 A. Yes.

20 Q. And these documents would have been kept, a  
21 document like this one would have been kept under  
22 your firm's custody or control?

23 A. Yes.

24 Q. Do you see that there are notes here for  
25 the Sage group?



1 A. Yes.

2 Q. And do you understand that to be referring  
3 to the Sage family accounts we've been talking  
4 about?

5 A. Yes.

6 Q. And do you have an understanding of what  
7 the notes on the first page if you look at them  
8 mean?

9 A. I can't even read it.

10 Q. Okay. Well, do you see the second sentence  
11 says -- tell me if you disagree with this -- could  
12 have gone SAB in eBay but cust did not want it?

13 A. Correct.

14 MS. FEIN: Objection to form.

15 Q. (By Mr. Kratenstein) Correct?

16 A. Could have brought short against the box on  
17 eBay, but customer did not want it.

18 Q. Do you understand that a member of the Sage  
19 family was instructing your firm not to go short  
20 against the box on eBay?

21 A. Yes.

22 Q. Would your firm have followed that  
23 instruction?

24 A. Yes.

25 (Exhibit Number 85 was marked for

1 identification.)

2 Q. (By Mr. Kratenstein) You can put that  
3 document aside. Exhibit 85. Mr. Madoff, do you see  
4 that this is a letter from Malcolm Sage to you?

5 A. Yes.

6 Q. Any reason to believe that you did not  
7 receive this letter?

8 A. No.

9 Q. He writes Dear Bernie, it was nice to see  
10 you at Ruth -- it was nice to see you and Ruth at  
11 Paul's party. Do you see that?

12 A. Yes.

13 Q. And I'll skip some of the rest and I'll go  
14 to the second paragraph. In the second sentence he  
15 says, quote, when we spoke last year we decided that  
16 it would be best to transition away from the managed  
17 portfolio accounts.

18 And then he goes on to say a sentence later  
19 or two sentences later since then our main holding,  
20 eBay, has dropped significantly. As that holding is  
21 a long-term one, I was hoping that you had shorted  
22 it against the box a while back. If you have a  
23 chance, can you confirm that? Do you see that?

24 A. Yes.

25 Q. And do you have any recollection as to

1 whether you had, in fact, shorted against the box as  
2 Mr. Sage had hoped?

3 A. When was this letter written? I don't  
4 know.

5 (Exhibit Number 86 was marked for  
6 identification.)

7 Q. (By Mr. Kratenstein) Well, let me see if I  
8 can refresh your recollection. He didn't date his  
9 letters for whatever reason, so we have to match  
10 them up against statements and/or confirms and  
11 memos. So I'm going to show you Exhibit 86. And do  
12 you see that this is a Sage Associates account  
13 statement for April 30, 2006?

14 A. Yes.

15 Q. And do you see that there are various short  
16 against the box positions for eBay?

17 A. I see sales transactions on eBay, right.

18 (Exhibit Number 87 was marked for  
19 identification.)

20 Q. (By Mr. Kratenstein) Sorry. Sales  
21 transactions, correct. And then if we look at  
22 Exhibit 48 -- I'm sorry -- Exhibit 87. I apologize.  
23 These are memos from this time period. If you look,  
24 April 2006, memos and/or confirms. If you'll just  
25 take a look at those and tell me what you see in

1 Exhibit 87? What are those?

2 A. I'm looking now. These are all  
3 confirmations.

4 Q. And do you see that they say short against  
5 the box?

6 A. Yes.

7 Q. So those would have been short against the  
8 box transactions?

9 A. Correct.

10 Q. Presumably as requested in the letter that  
11 we marked as Exhibit 85?

12 A. Yes.

13 (Exhibit Number 88 was marked for  
14 identification.)

15 Q. (By Mr. Kratenstein) Thank you. Last  
16 letter, last one. This is Exhibit 88. Mr. Madoff,  
17 do you see that Exhibit 88 is a letter from Malcolm  
18 Sage to you?

19 A. Yes.

20 Q. And it's got handwriting on it?

21 A. Yes.

22 Q. Whose handwriting?

23 A. Annette's.

24 Q. And, again, you recognize that from your  
25 time working with her?

1 A. Yes.

2 Q. Do you have any reason to believe that you  
3 did not receive this letter?

4 A. No.

5 Q. Do you see that Mr. Sage is writing to you,  
6 Mr. Madoff, about sale of certain Sage Associates'  
7 positions?

8 A. Yes.

9 Q. And he says Martin and I recently met with  
10 Paul. Let me stop there. Do you understand Martin  
11 to be Malcolm's brother, Martin Sage?

12 A. Yes.

13 Q. Martin and I recently met with Paul in  
14 regard to selling our positions in the Sage  
15 Associates accounts and to transfer the proceeds  
16 into index option accounts. Do you see that?

17 A. Right, yes.

18 Q. And do you have an understanding of what he  
19 meant by index option accounts?

20 A. That's a split strike transaction.

21 Q. So prior to this date in Sage Associates it  
22 was directed trading and he's now talking about  
23 moving to split strike?

24 MS. FEIN: Objection.

25 THE WITNESS: Right.

1 Q. (By Mr. Kratenstein) Your answer was?

2 A. Correct.

3 Q. Thank you. And if you look on the second  
4 page, you can see at the bottom that Ms. Bongiorno's  
5 notes have dates in them, one being 8-23-06. Do you  
6 see that at the bottom?

7 A. Yes.

8 Q. So do you believe that these notes were  
9 created on or around August 23rd, 2006?

10 A. Yes.

11 Q. And Mr. Sage talks about -- he says, quote,  
12 he referring presumably to Paul; correct?

13 A. Right.

14 Q. Had some ideas from a tax standpoint and  
15 suggested that he with us meet with you at your  
16 availability to finalize the transfer and the timing  
17 thereof. Do you see that?

18 A. Yes.

19 Q. Do you recall whether you, in fact, met?

20 A. No.

21 Q. You may have, you just don't recall?

22 A. Correct.

23 Q. Then Mr. Sage writes the only concern he  
24 had of any immediacy was that we not buy back into  
25 the eBay short position because that would trigger a

1 short-term recognition as opposed to, quote,  
2 delivering, unquote, the stock. Do you see that?

3 A. Yes.

4 Q. Do you have an understanding of what Mr.  
5 Sage was talking about there?

6 A. Yes. He wanted us to deliver the  
7 securities as opposed to -- I'm not sure whether he  
8 was talking about delivering the securities from one  
9 account to the other account, you know, to trigger a  
10 particular gain or whether he was talking about  
11 delivering the securities out, period, out of the  
12 firm.

13 Q. Okay. But he is telling you that he  
14 doesn't want you to buy back into the eBay short;  
15 correct?

16 A. Right.

17 Q. And that's an instruction from him?

18 A. Yes.

19 Q. You would have followed that instruction?

20 A. Yes.

21 MS. FEIN: Objection.

22 Q. (By Mr. Kratenstein) Would you have  
23 followed that instruction?

24 A. Yes.

25 Q. In the notes at the bottom Ms. Bongiorno --

1 well, first, notes at the top Ms. Bongiorno writes  
2 ask Bernie about this. Do you see that?

3 A. Yes.

4 Q. Do you recall being asked about this?

5 A. Do I recall? No. I can't --

6 Q. Right.

7 A. I can't say that I do.

8 Q. Right. It's too long ago?

9 A. Yes.

10 Q. Okay. You may have been asked about it,  
11 but you just can't remember?

12 A. That's correct.

13 Q. At the bottom she writes don't do anything.  
14 We cannot -- the next word may be trim or tran. Do  
15 you have any idea?

16 A. Must be transfer.

17 Q. Transfer everything and leave open short  
18 eBay. Do you see that?

19 A. Yes.

20 Q. Do you have an understanding of what she's  
21 saying there?

22 A. She's telling us to leave the positions as  
23 they appear, as they are.

24 Q. Okay. And then on the next page she writes  
25 about several calls she had with Malcolm Sage. Do



1 you see that?

2 A. Yes.

3 Q. So she writes first I called Malcolm Sage  
4 end of June to say the accounts were as close to  
5 even and should we do the transfers, exclamation  
6 point. Do you see that?

7 A. Yes.

8 Q. He said he would talk to Paul, call back.  
9 Do you see that?

10 A. Yes.

11 Q. So is it fair to say that Ms. Bongiorno was  
12 seeking instruction from Mr. Sage?

13 A. Yes.

14 Q. Next note, called again end of July. He  
15 said he didn't get a chance to get to talk to Paul  
16 and he will call me back. Do you see that?

17 A. Yes.

18 Q. And, again, do you understand Ms. Bongiorno  
19 to be seeking instructions from Mr. Sage?

20 A. Yes.

21 Q. Last note, called again 8-23-06. He said  
22 the or he, it's hard to tell, promises to call me  
23 back by Tuesday, August 29, 8-29, exclamation point.  
24 Do you see that?

25 A. Yes.

1 Q. And, again, fair to say that Ms. Bongiorno  
2 was looking for direction from Mr. Sage?

3 A. Correct.

4 Q. Okay. We have talked about the Sage  
5 Associates account and the fact that it was not a  
6 split strike account; correct?

7 A. Correct.

8 Q. And we can pull out the year-end account  
9 statements if you like, but we've marked a couple of  
10 them. We marked the December 31, '02 and we marked  
11 other year-end statements for Sage Associates during  
12 the course of this deposition, but at the end of the  
13 year in a split strike account what would -- what  
14 types of securities would be in the account?

15 A. Typically, a basket of S&P 100 securities  
16 and index options hedging that account.

17 Q. But at the end of the year didn't you go to  
18 treasuries and cash in most accounts?

19 A. At the end of the year?

20 Q. Yes.

21 A. What period are you talking about?

22 Q. Well, was there ever a period when in split  
23 strike accounts you would at the end of the year at  
24 least on the statements show that you had liquidated  
25 the portfolio of securities in that account and

1 moved it into treasuries and cash?

2 A. What period are you talking about because  
3 we weren't -- I didn't actually do the split strike  
4 trade --

5 Q. Correct.

6 A. -- at a certain period of time post-1992.

7 Q. I'm talking about post-1992.

8 A. Well, then we wouldn't have gone into the  
9 -- we never would have done the transaction.

10 Q. Right.

11 A. So the monies could have been in  
12 treasuries, you know, but it wouldn't be fair to say  
13 that we were actually executing the split strike  
14 trade post-1992.

15 Q. Right. But on a customer statement  
16 post-1992 at the end of the year what would you  
17 show?

18 A. It would appear. It would appear in  
19 treasuries.

20 Q. And in the Sage Associates year-end  
21 statements would you show treasuries or would you  
22 show actual positions?

23 MS. FEIN: Objection.

24 THE WITNESS: If it was in a split strike  
25 strategy, we would not show the positions typically.

1 We would just show treasuries, which is a position.

2 Q. (By Mr. Kratenstein) Right. And if it was  
3 not in split strike, what would you show? The  
4 actual securities that were there?

5 A. Yes.

6 Q. And so, for example -- let me pull out the  
7 document. Hang on.

8 MS. CHAITMAN: Is that Exhibit 80?

9 Q. (By Mr. Kratenstein) Here's Exhibit 63,  
10 which we've already marked. So here's Exhibit 63.  
11 See, it's a Sage Associates account statement for  
12 12-31-02?

13 A. Correct.

14 Q. And this is for the sub three account?

15 A. Yes.

16 Q. And you're showing actual securities in the  
17 account at the end of the year, not treasuries and  
18 cash?

19 A. Correct.

20 Q. And that shows it's not split strike;  
21 right?

22 A. Correct.

23 Q. Your split strike accounts, they would  
24 generate on paper steady returns; correct?

25 A. Depends upon what period you're talking

1 about.

2 Q. Post-1992?

3 A. Yes.

4 Q. Of 10 to 20 percent; correct?

5 A. No.

6 Q. What was the general --

7 A. Talking about an annualized return?

8 Q. Annualized?

9 A. Yes.

10 Q. So 10 to 20 percent annually?

11 A. Correct.

12 Q. For an account like the Sage Associates  
13 account which was not split strike and which was  
14 showing actual securities, what kind of returns  
15 would that type of account show?

16 A. I have no idea. It depends.

17 Q. It would depend on the type of securities  
18 in the account; right?

19 A. That's right.

20 Q. It wouldn't be a steady return?

21 A. No. Could be, but depends upon there were  
22 never really steady returns. That's been mentioned  
23 before. There was some -- there was some -- you  
24 know, depends upon the strategy and depends upon the  
25 period of time. It could have been -- if you're

1 talking about at the end of the month or the end of  
2 the quarter, the returns could be all over the  
3 place.

4 Q. So in Sage Associates in 2002, for  
5 example --

6 A. Yes.

7 Q. -- if Malcolm Sage was directing you to buy  
8 and sell securities in Sage Associates; correct?

9 A. Yes.

10 Q. And you were holding those securities;  
11 correct?

12 A. Yes.

13 Q. The Sage Associates accounts certainly in  
14 2002 and any other year in which that type of  
15 trading was being done would reflect the return of  
16 the transactions that were executed in the account;  
17 correct?

18 A. Correct.

19 Q. And that may not be a steady return? It  
20 would follow the market for those securities;  
21 correct?

22 MS. FEIN: Objection.

23 THE WITNESS: Correct.

24 Q. (By Mr. Kratenstein) Correct?

25 A. Yes.

1 MR. KRATENSTEIN: Thank you very much, Mr.  
2 Madoff. I have no further questions at this time.  
3 Why don't we take a break?

4 MR. GOLDMAN: Your food from the wherever  
5 they make it is here.

6 THE VIDEOGRAPHER: Going off the record.  
7 The time is 11:09.

8 (A recess was taken and Exhibit 53A was  
9 marked for identification.)

10 THE VIDEOGRAPHER: Back on the record.  
11 The time is 11:58.

12 Q. (By Mr. Kratenstein) Mr. Madoff, it was  
13 pointed out during your examination that we had an  
14 error in one of our exhibits, so I just want to  
15 correct the error.

16 I put in front of you, back in front of you  
17 Exhibit 47, which was the -- a letter from Malcolm  
18 Sage to Bernard L. Madoff Investment Securities.  
19 And it says Dear Bernie -- we marked it as  
20 Exhibit 47. One of the transactions in that letter  
21 under 1(c) involved movement of International Paper  
22 moving the short position from the Sage Associates  
23 seven account to the three account. Do you see  
24 that?

25 A. Yes.

1 Q. And I had showed you as Exhibit 53 memos  
2 and/or confirms relating to that and it was pointed  
3 out that we had some mispagination. So I'm showing  
4 you Exhibit 53A, which bears production numbers Sage  
5 0004290 to 91. Do you see that?

6 A. Uh-huh.

7 Q. And can you tell me what that is?

8 A. It's a credit memo.

9 Q. And that shows the transfer of the  
10 international paper short position from the seven  
11 account to the three account --

12 A. Right.

13 Q. -- as reflected --

14 A. Right.

15 Q. -- as instructed rather in Exhibit 47?

16 A. Correct.

17 Q. And you would have these memos instead of  
18 confirms because it's an internal transfer?

19 A. That's correct.

20 Q. If you were doing a -- you'd have a confirm  
21 when you were actually buying or selling?

22 A. Right.

23 MR. KRATENSTEIN: Thank you very much.  
24 That concludes my direct examination. Thank you.

25 MS. FEIN: I understand from you, Helen,



1 that you're not planning to do an examination today.  
2 We are waiting until the direct examination of Mr.  
3 Madoff is finished to start our cross-examination.  
4 That's what was contemplated by the order that was  
5 entered by this Court September 11th, 2017 regarding  
6 Mr. Madoff's second day deposition.

7 To the extent for whatever reason that we  
8 don't have time to finish our cross-examination  
9 tomorrow, we will object to the use of the testimony  
10 and move to strike the direct testimony. Thanks.

11 MR. KRATENSTEIN: Before you go off, I  
12 want to make sure I understand that. If you don't  
13 have time to finish your cross tomorrow, you reserve  
14 the right to strike everything we did today?

15 MS. FEIN: What I should say is to the  
16 extent we're not permitted equal time to finish  
17 tomorrow, so if for some reason Mr. Madoff is  
18 unavailable tomorrow or there's some reason where we  
19 don't have sufficient time in one day; not that we  
20 would need -- be seeking future days after that, but  
21 as long as we are provided what the order  
22 contemplated, which is one day of direct testimony  
23 and we shouldn't need more than that and that's what  
24 we've agreed to, then that's all that we would need.

25 MR. KRATENSTEIN: Okay. Well, I think I

1 understand your position, but we reserve all  
2 rights --

3 MS. FEIN: Certainly.

4 MR. KRATENSTEIN: -- and cross these  
5 bridges if and when we get to them.

6 MS. FEIN: Certainly. Thank you.

7 MR. KRATENSTEIN: Thanks.

8 THE VIDEOGRAPHER: We're off the record in  
9 the November 8th, 2017 deposition of Bernard L.  
10 Madoff, Volume III. The number of discs used was  
11 one. The time is 12:02.

12 (Reading and signing of the deposition by  
13 the witness was reserved and the deposition was  
14 adjourned at 12:02 p.m.)

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C E R T I F I C A T E

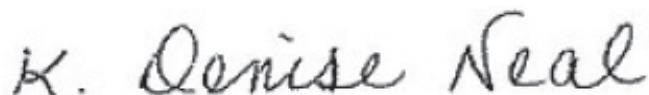
NORTH CAROLINA:

GUILFORD COUNTY:

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 386 through 493 represent a true and correct transcript of the evidence given. I further certify that I am not in any way financially interested in the result of said case.

I have no written contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. I will charge my usual and customary rates to all parties in the case.

This, the 21st day of November, 2017.



K. Denise Neal, RPR  
Registered Professional Reporter  
Notary Public No. 200517500101

E R R A T A S H E E T

Pursuant to Rule 30(7)(e) of the Federal Rules of Civil Procedure, any changes in form or substance which you desire to make to your deposition testimony shall be entered upon the deposition with a statement of the reasons given for making them.

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

\* \* \* \* \*

I, the undersigned, BERNARD L. MADOFF, do hereby certify that I have read the foregoing deposition and that to the best of my knowledge said deposition is true and accurate (with the exception of the following corrections listed below).

Page 493

1 Page Line should read:

2 Reason for change:

3

4 Page Line should read:

5 Reason for change:

6

7 Page Line should read:

8 Reason for change:

9

10 Page Line should read:

11 Reason for change:

12

13 Page Line should read:

14 Reason for change:

15

16 Page Line should read:

17 Reason for change:

18

19 Page Line should read:

20 Reason for change:

21 Signature:

22 Sworn to and Subscribed before me

23 , Notary Public.

24 This day of , 2017.

25 My Commission Expires:

[& - 40]

Page 1

<b>&amp;</b>	<b>12</b> 388:14	<b>1996</b> 408:24 424:5	<b>3000</b> 386:20
<b>&amp;</b> 387:14 395:3	<b>12-13-79</b> 389:12	424:8 426:15	394:13
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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